

CASE NO. 2023-39642

DHI HOLDINGS, LP,) **IN THE DISTRICT COURT**
)
Plaintiff,)
vs.)
)
U.S. BANK TRUST NATIONAL) **61st JUDICIAL DISTRICT**
ASSOCIATION, NOT IN ITS)
INDIVIDUAL CAPACITY BUT SOLELY)
AS OWNER TRUSTEE FOR LEGACY)
MORTGAGE ASSET TRUST 2018-RPL2;)
and RUSHMORE LOAN)
MANAGEMENT SERVICES, LLC,)
) **OF HARRIS COUNTY, TEXAS**
Defendants.)

**PLAINTIFF’S TRADITIONAL MOTION FOR SUMMARY JUDGMENT ON THE
STATUTE OF LIMITATIONS**

COMES NOW Plaintiff, DHI Holdings, LP (hereafter the “DHI”), and files this Motion for Summary Judgment against Defendants Rushmore Loan Management Services, LLC (“Rushmore”) and U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2018-RPL2 (“US Bank”) (together the “Defendants”). In support of this motion, DHI would show the Court:

I. INTRODUCTION AND SUMMARY

DHI owns the residential property at 12973 Wirevine Lane, Houston, TX 77072 (hereafter the “Property”) by virtue of a Constable’s Execution Deed. DHI filed suit on June 28, 2023 against Defendants seeking a declaration of a void mortgage lien (deed of trust) on the Property. Defendants’ active pleading is its Second Amended Answer filed on February 22, 2024.

DHI is not the original borrower on the mortgage loan that Defendants claim the right to foreclose on. DHI is in no way related to or associated with the original borrowers, except as the successor in interest to title of the Property. DHI is a third-party buyer for value with no contractual relationship with Defendants. Defendants claim the right to foreclose on the Property under the subject deed of trust, but as DHI will show, the power of sale is void due to the expiration of the statute of limitations to foreclose.

II. FACTS

On or about January 3, 2006, Shawn Garvin (“Garvin”) entered into a consumer credit transaction with the original lender (Fieldstone) by obtaining a \$75,000.00 purchase money mortgage loan secured by the Property. The \$75,000.00 note was secured by a deed of trust (“Deed of Trust”) on the Property in favor of Fieldstone. Altogether, the mortgage note and Deed of Trust are the “Loan.” The Deed of Trust was filed in the Harris County Property Records as No. Z023017.¹ See Exhibit 1 – 2006 Deed of Trust; Exhibit 16 - Note. On the same day, Garvin obtained title to the Property through a warranty deed, filed in the Harris County Property Records as No. Z023028. See Exhibit 2 – 2006 Warranty Deed.

On March 8, 2018, the 80th District Court of Harris County, Texas, pursuant to a judgment rendered on August 4, 2017, issued a decree of sale in Cause No. 2016-43328, *Wildflower Green Homeowners Association v. Shawn Garvin*. See Exhibit 3 – Constable Deed to Plaintiff. On May 1, 2018, the Constables’ Office conducted a sale of the Property and the highest bidder was Plaintiff, DHI Holdings LP, for the amount of \$14,000.00. See *id.* Plaintiff has owned the Property since that date and now Legacy Mortgage and Rushmore are claiming the right to foreclose.

Garvin fell into default on the Loan at several years ago. He was sent notice of default and

¹ The Deed of Trust was later refiled as document Z103648. This document is substantively the same as Exhibit 1, except it adds a description of the Property.

intent to accelerate letters in 2016 and 2018:

- April 17, 2016 (Exhibit 11).
- October 31, 2016: (Exhibit 12).
- February 15, 2018 (Exhibit 13).
- May 17, 2018 (Exhibit 14).

There was a notice of sale file in the Harris County records on May 23, 2019 setting a foreclosure sale for July 2, 2019. Exhibit 4 – July 2019 Notice of Sale. That sale did not take place. Exhibit 10 – Plaintiff’s Declaration. No judicial foreclosure lawsuit or non-judicial foreclosure sale took place within four years of May 23, 2019. Id.

There was a new notice of sale filed in Harris County on June 1, 2023 setting a sale for July 5, 2023. Exhibit 9 – July 2023 Notice of Sale. That sale did not take place either. Exhibit 10.

Statements addressed to the borrower from May 2019 to September 2023, indicate the loan was continuously accelerated. Exhibit 15 – Mortgage Statements.

There are four recorded mortgage assignments related to the Loan on file with the Harris County Property Records:

- September 16, 2016: MERS, “as nominee for Fieldstone Mortgage Company, its successor and assigns”, purports to assign the Loan to the LSF9 Master Participation Trust. Exhibit 5.
- December 19, 2017: The LSF9 Master Participation Trust purports to assign the Loan to J.P. Morgan Acquisition Corp. Exhibit 6.
- July 27, 2018: J.P. Morgan Acquisition Corp. purports to assign the Loan to Goldman Sachs Mortgage Company. Exhibit 7.
- November 13, 2018: Goldman Sachs Mortgage Company purports to assign the Loan to the Legacy Mortgage Asset Trust 2018-RPL2. Exhibit 8.

III. SUMMARY JUDGMENT EVIDENCE

DHI relies upon and incorporates by reference the pleadings, orders, service documents, and agreements from the clerk's record of this case and asks the Court to take judicial thereof. Kafi offers the following summary judgment evidence in support of this response:

Exhibit 1 – 2006 Deed of Trust

Exhibit 2 – 2006 Warranty Deed

Exhibit 3 – Deed to Plaintiff

Exhibit 4 – July 2019 Notice of Sale

Exhibit 5 – September 16, 2016 Assignment

Exhibit 6 – December 19, 2017 Assignment

Exhibit 7 – July 27, 2018 Assignment

Exhibit 8 – November 13, 2018 Assignment

Exhibit 9 – July 2023 Notice of Sale

Exhibit 10 – Plaintiff's Declaration

Exhibit 11 – April 17, 2016 Notice of Intent to Accelerate

Exhibit 12 – October 31, 2016 Notice of Intent to Accelerate

Exhibit 13 – February 15, 2018 Notice of Intent to Accelerate

Exhibit 14 – May 17, 2018 Notice of Intent to Accelerate

Exhibit 15 – Mortgage Statements

Exhibit 16 - Note

IV. ARGUMENT AND AUTHORITIES

A. Standard of Review

To prevail on a “traditional” summary-judgment motion asserted under Rule 166a(c) on a party's own cause of action or affirmative defense, the moving party must prove it is entitled to judgment as a matter of law by establishing each element of its claim or defense and show that there is no genuine issue regarding any material fact. *See* TEX. R. CIV. P. 166a(c); *Little v. Tex. Dep't of Criminal Justice*, 148 S.W.3d 374, 381 (Tex. 2004). To prevent the court from granting

the movant's motion for summary judgment, the non-movant can do one of the following: (1) create a fact issue on at least one element of the movant's claim or defense (*see, e.g., Geiselman v. Cramer Fin. Grp.*, 965 S.W.2d 532, 537 (Tex. App.–Houston [14th Dist.] 1997, no writ) or (2) create a fact issue on the non-movant's own affirmative defense by filing a response that identifies the defense and providing summary judgment evidence that satisfies each element of the defense (*Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984)). If the non-movant, by response, identifies or raises a fact issue about the movant's right to summary judgment on the movant's claim or the non-movant offers some evidence to show all the elements of a defense of its own, the movant may salvage its right to summary judgment by showing in a reply that, as a matter of law, there are no fact issues or by negating at least one element of the non-movant's affirmative defense. *See* O'CONNOR'S TEXAS RULES * CIVIL TRIALS CH. 7-C § 4.3.3 (2024 ED.).²

B. DHI's Evidence is Sufficient to Prove the Essential Elements of its Statute of Limitations Claim

DHI shows herein that it is entitled to judgment as a matter of law on all essential elements of its statute of limitations' claim for declaratory relief and associated claim for quiet title. Defendants had to conduct a non-judicial foreclosure sale or file suit for judicial foreclosure within four years after the acceleration of the Loan. As stated above, the acceleration is May 23, 2019. *See Exhibit 4.* Defendants did not conduct a non-judicial foreclosure sale or file suit for judicial foreclosure within four years of any of this date. Exhibit 10.

Under Texas law, a real property lien and the power of sale to enforce it become void if a mortgagee does not conduct a foreclosure sale or sue for judicial foreclosure under a security

² "If the defendant, by its response and summary-judgment evidence, challenges the plaintiff's right to summary judgment, the plaintiff should file a reply to assure the court that summary judgment in its favor is still warranted ... [by] showing as a matter of law that there are no fact issues ... [or by] by negating as a matter of law the existence of at least one element of the affirmative defense."

instrument within four years of the date the cause of action accrues. TEX. CIV. PRAC. & REM. CODE § 16.035; *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562 (Tex. 2001). Ordinarily, “the four-year statute of limitations period does not begin to run until the maturity date of the last note, obligation, or installment.” *Stewart v. U.S. Bank Nat. Ass’n*, No. H-13-3197, 2015 WL 3448722 at *2 (S.D. Tex. Jan. 23, 2015) (citing TEX. CIV. PRAC. & REM. CODE § 16.035(e)). However, if payment is accelerated according to an optional acceleration clause in the loan documents, the limitations period accrues on the date the note is accelerated. *Stewart*, 2015 WL 3448722, at *2 (citing *Wolf*, 44, S.W.3d at 566-67).

Effective acceleration requires two acts: (1) notice of intent to accelerate, and (2) notice of acceleration. *Id.* (citing *Shumway v. Horizon Credit Corp.*, 801 S.W.2d 890, 892 (Tex. 1991); *Ogden v. Gibraltar Sav. Ass’n*, 640 S.W.2d 232, 233 (Tex. 1982)).

In *Wolf*, the Texas Supreme Court found that the summary-judgment evidence in that case conclusively established an August 15, 1994 accrual. The summary judgment proof was: (1) a copy of the deed of trust containing optional acceleration and power of sale clauses in favor of the original mortgagee and its successors and assigns; (2) documents tracing the note’s ownership from the original lender to each successor; and (3) a notice of intent to accelerate followed by a notice of acceleration signed by the lender’s agent. 44 S.W.3d at 568-69.

The summary judgment evidence presented here is identical to the evidence approved of in *Wolf*. The following summary judgment evidence satisfies DHI’s burden to show that the Loan was accelerated on May 24, 2017:

- Exhibit 1: Deed of Trust with Optional Acceleration Clause;
- Exhibits 5, 6, 7, & 8: Loan Assignments to Defendants;
- Exhibits 11, 12, 13, & 14: Unequivocal Notices of Intent to Accelerate;

- Exhibit 4: Unequivocal Acceleration (Notice of Sale File Stamp of May 23, 2019).³

DHI is the legal title-holder to the Property with standing to assert claims for quiet title and declaratory judgment to have the Deed of Trust voided and removed from title. *See e.g. Morlock, L.L.C. v. Nationstar Mortg., L.L.C.*, 447 S.W.3d 42, 45 (Tex. App.—Houston [14th Dist.] 2014, pet. denied); *see also Goswami v. Metro Savings & Loan Association*, 751 S.W.2d 487, 489 (Tex. 1988) (When the third party has a property interest, whether legal or equitable, that will be affected by such a sale, the third party has standing to challenge such a sale to the extent that its rights will be affected by the sale.). Defendants did not conduct a non-judicial foreclosure sale or file suit for judicial foreclosure within four years of May 23, 2019. Exhibit 10.

In conclusion, DHI has carried its burden under Tex. R. Civ. P. 166(a) to demonstrate the accrual date for the four-year statute of limitations to foreclose was May 23, 2019. No matter which date is relied upon, the four-year limitations period has run. Because Defendants did not conduct a non-judicial foreclosure sale or file suit for judicial foreclosure within four years of any of the accrual, DHI is entitled to have the Deed of Trust cancelled by final declaration of this Court because the Deed of Trust is now void as a matter of law. *See, e.g., Landers v. Nationstar Mortgage, LLC*, 461 S.W.3d 923, 926-27 (Tex. App.—Tyler 2015, no pet.); *see also U.S. ROF III Legal Title Trust 2015-I v. Morlock, L.L.C.*, No. 14-18-00332-CV, 2020 WL 205970, at *4 (Tex. App.—Houston [14th Dist.] 2020, no pet.).

C. DHI is Entitled to Attorney Fees

DHI should be awarded its costs and reasonable and necessary attorney's fees under Tex. Civ. Prac. & Rem. Code § 37.009 incurred in defending this action. DHI pleaded for attorney fees.

³ A notice of foreclosure sale, so long as preceded by a notice of intent to accelerate, is also an unequivocal notice of acceleration. *Karam v. Brown*, 407 S.W.3d 464, 470 (Tex. App.—El Paso 2013, no pet.).

Section 37.009 provides that, in an action for a declaratory judgment, “the court may award costs and reasonable and necessary attorney’s fees as are equitable and just.” And “[e]ither party may obtain attorney’s fees regardless of which party is affirmatively seeking relief.” *Save Our Springs Alliance, Inc. v. Lazy Nine Mun. Utility Dist.*, 198 S.W.3d 300, 318 (Tex. Ct. App.—Texarkana 2006) (internal citations omitted). “Determining whether to award fees, or how much of an award is equitable and just in a given case, are questions committed to the trial court’s discretion because of the nature of the issue.” *Roddy v. Holly Lake Ranch Association, Inc.*, 589 S.W.3d 336, (Tex. Ct. App.—Tyler 2019) (internal citations omitted). “Whether it is ‘equitable and just’ to award attorney’s fees depends not on direct proof, but on the concept of fairness, in light of all the circumstances of the case.” *Id.*

Here, an award of attorney’s fees to DHI is just and equitable, particularly in light of the circumstances. Defendants claim the right to enforce the lien that it blatantly expired. DHI is entitled to attorney fees and case expenses in the amount of **\$15,737** for trial court work to date, plus attorney fees in the event Plaintiff further challenges the dismissal of her claims and failing. Exhibit 10.

VI. CONCLUSION & PRAYER

WHEREFORE, based on the undisputed evidence and the authorities cited:

1. DHI requests that the Court GRANT this Motion for Summary Judgment;
2. Declare that the Deed of Trust is void because the statute of limitations has expired;
3. Declare Defendants have no enforceable lien or security interest against the Property;
4. Quiet title in DHI’s name, free and clear of Defendants’ lien claims;
5. Award DHI its reasonable attorney’s fees under Tex. Civ. Prac. & Rem. Code § 37.009, costs of court, and pre- and post-judgment interest; and

6. Grant all other and further relief to which DHI may be justly entitled, at law or in equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing document was served to the following via e-mail and/or e-service on March 14, 2025.

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/s/ Jeffrey C. Jackson

JEFFREY C. JACKSON

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Myra Nguyen on behalf of Jeffrey Jackson

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Status as of 3/14/2025 1:17 PM CST

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